

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

September 4, 2008

A meeting of the Board of Environmental Protection was held on Thursday, September 4, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard and P. Andrews Nixon

Absent: Matt Scott, Lissa Widoff and Nancy Ziegler

<u>Staff:</u>	Bureau of Air Quality	Ron Severance
	Bureau of Land and Water Quality	Becky Maddox
	Bureau of Land and Water Quality	James Cassida
	Bureau of Land and Water Quality	Marianne Hubert
	Bureau of Land and Water Quality	Art McGlaughlin
	Dept. of Inland Fisheries and Wildlif	Lindsay Tudor

Others: David P. Littell, Commissioner
Peggy Bensinger, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 1:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Regional Greenhouse Gas Initiative (RGGI): In preparation for the upcoming auction, RGGI Inc. is reviewing the qualifications of potential bidders.

- Climate Change Program Manager: The Department has been granted a hiring extension and is finishing interviews for the climate change program manager. It is likely that the successful candidate will be on board this month.

Board member Ernest Hilton asked about the location of the auction.

Commissioner Littell explained that although RGGI Inc.'s auction firm is located in Worcester, MA, the location of the auction is still to be determined [noting that the certification of auction results has been scheduled for Baltimore].

Board member Elizabeth Ehrenfeld asked if the auction is still being held next Wednesday.

Commissioner Littell replied that the auction is currently on schedule for September 25, 2008.

Clean Air Act Interstate Rule (CAIR): Provisions of the Bush Administration's Clean Air Act Interstate Rule which provides for reduction of criteria pollutants [SO_2 (*acid rain*) NO_x (*ozone*) and *particulates* ($\text{PM} - \text{PM}_{10}$ and $\text{PM}_{2.5}$)] was recently overturned in court as inconsistent with the Clean Air Act. This creates a significant problem for Maine and 28 states whose air quality State Implementation Plans (SIP) are based on the CAIR rule. All of these SIPs will no longer be in compliance with the Clean Air Act as a result of this court decision. It is likely that these SIP issues will be difficult to correct without congressional action.

Board member Wing Goodale asked if the Federal proposal to designate Atlantic salmon as endangered on the Penobscot, Kennebec and Androscoggin will affect the pending proposed reclassification of rivers and streams or the current river classification of the Penobscot.

Commissioner Littell noted that the five (5) salmon rivers Downeast are either A or AA and the proposal is for listing of the Penobscot, Kennebec and Androscoggin. The Federal listing does not directly impact the pending reclassifications.

Atlantic Salmon: The numbers for returning salmon have increased dramatically. This is a direct result of the re-stocking efforts of the Atlantic Salmon Commission and improvements in watershed management.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS:

Inland Fisheries and Wildlife (IFW) boat ramp at Mere Point: The Board's permit approval contained several provisions for wetlands compensation including the replacement of several moorings. The Department recently modified the permit to allow for the continued existence of several traditional block and chain moorings (as opposed to embedment type moorings specified in the permit) that were found to be located in low value eel grass habitat, allow IFW to conduct an equal amount of eel grass habitat restoration "off-site" but within the 3 mile radius (as opposed to restoration adjacent to the project site), and require registration of the agreements for maintenance of the moorings with the Town's Harbor Master rather than in the Registry of Deeds. The licensee will provide the DEP with periodic updates to ensure that mooring maintenance is being done. The memorandum of agreement between IFW and the Town of Brunswick was modified to reflect the permit amendments.

Chairman Hilton noted that the City of Brunswick recently conducted a grand opening event.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:

Board member Elizabeth Ehrenfeld asked about the nature of the Florida Power and Light applications for relicensing of ten (10) of their dams.

Cindy Bertocci explained that the individual applications were for non-contact cooling water and not for a major relicensing of the entire facility.

Board member Elizabeth Ehrenfeld asked about the processing of corn and other grains for use as a fuel in boilers.

Department staff provided information concerning the use of the whole kernel corn noting that some producers use a compressed form of the kernel, but that whole unprocessed corn including husks may also be used as a fuel.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. NCTAMS LANT DET (Naval Computer and Telecommunications Station), Cutler – Administrative Consent Agreement (BAQ)
2. BJME OPERATING CORP. d/b/a BJ'S WHOLESALE CLUB, Portland – Administrative Consent Agreement (BAQ)
3. DAVID HILL, Lyman – Administrative Consent Agreement (BLWQ - Land)
4. RICHMOND UTILITIES DISTRICT, Richmond - Administrative Consent Agreement (BLWQ - Water)

Board voted (7-0-0-3) on a motion to approve consent agenda items 1, 2, 3, and 4 as presented:

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and P. Andrews Nixon voted to support the motion. Board members Matt Scott, Lissa Widoff and Nancy Ziegler were absent.

III. Regular Agenda

1. CHAPTER 150, CONTROL OF EMISSIONS FROM OUTDOOR WOOD BOILERS / AMENDMENT (post to public hearing)

And

CHAPTER 160, OUTDOOR WOOD BOILER REPLACEMENT AND BUY BACK PROGRAM / NEW (post to public hearing)

Staff: Ron Severance, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to post amendments to Chapter 150, Control of Emissions from Outdoor Wood Boilers and new Chapter 160 Outdoor Wood Boiler Replacement and Buy Back Program. Amendments to Chapter 150 incorporate provisions to control biomass pellet fueled outdoor boilers including provisions concerning the sale, installation, use, and siting. Chapter 160 regulations establish a non-lapsing outdoor wood boiler fund, the criteria by which a boiler is classified as creating a nuisance or public health threat, and eligibility for participation in the fund for compensation, removal or possible replacement of nuisance boilers. October 16, 2008 is the anticipated date of the public hearing, with October 27, 2008 as the deadline for submission of written comments. The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B), Public Law 2007 Chapter 190 and Public Law 2007 Chapter 680.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, and P. Andrews Nixon voted to support the motion. Board members Matt Scott, Lissa Widoff and Nancy Ziegler were absent.

2. UNITY COLLEGE OF MAINE // SITE LOCATION OF DEVELOPMENT MINOR AMENDMENT PERMIT L-19109-22-F-B (appeal filed by Richard Haffner)

Staff: James Cassida and Becky Maddox, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to deny the appeal filed by Mr. Richard Haffner, approve the draft proposed Board Order as presented, and affirm the Commissioner's licensing decision set forth in Department Order L-19109-22-F-B which approved construction of an addition to the Welcome Center building, parking area and new walkway for Unity College in Unity. The vote was taken pursuant to 38 M.R.S. Sections 341-D(4), 344 and 06-096 CMR Chapter 2, Section 24(B).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard and P. Andrews Nixon, voted to support the motion. Board members Matt Scott, Lissa Widoff and Nancy Ziegler were absent.

Informational Session

- Significant Wildlife Habitat Review Guidance (Staff: Jim Cassida, Bureau of Land and Water Quality and Lindsay Tudor, Department of Inland Fisheries and Wildlife)

Department staff reviewed the GIS mapping tool used to locate significant wildlife habitat and determine the area of project impact to habitat, and reviewed the Department's guidelines and matrix for Assessing Habitat Significance and Assessing Habitat Impact.. Staff from DMR provided photos of shorebird feeding and roosting habitat and explained the significance of "first" mud and "last" mud habitat for shorebird feeding, noting that these areas provide critical additional hours of feeding opportunity to help the birds develop the fat reserves needed to support migration. An overview of bird behavior was given including responses to threats and fidelity to particular habitats and feeding areas highlighting the importance of protecting those feeding and roosting habitat areas currently in use by certain rare species (e.g. red knots, American oyster catchers, etc...).

Next Regular Meeting – Thursday, September 18, 2008 – Holiday Inn/Ground Round